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Environmental Construction, Inc., and Wayne A. Moore and Junior Allen Smith and Sheet Metal Workers International Association Local No. 2
Case 17–CA–19890

January 29, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS WALSH
AND HURTGEN

On February 18, 2000, the National Labor Relations Board issued an unpublished Order, directing Respondent Environmental Construction Inc., its officers, agents, successors, and assigns, to make whole employee-applicant Tim Moran for any loss of earnings and other benefits resulting from its discriminatory refusal to hire him in violation of the National Labor Relations Act. On May 24, 2000, the Eighth Circuit issued an unpublished judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due Tim Moran, as well as whether Wayne A. Moore and Junior Allen Smith should be held individually liable, on November 3, 2000, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order and the personal liability of Wayne Moore and Junior Allen Smith for that amount, and notifying the Respondents that they should file timely answers complying with the Board's Rules and Regulations. Although properly served with copies of the compliance specification, the Respondents failed to file answers.¹

On December 13, 2000, the General Counsel filed with the Board a Motion for Default Summary Judgment, with exhibits attached. On December 14, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

¹ The copies of the compliance specification were served by certified mail and by regular mail on Respondent Environmental Construction, Inc., at its last known address, but were returned by the United States Postal Service on November 8, and 24, 2000, with stamps that stated, "Moved, Left No Address." On November 3, 2000, a copy of the specification was served by certified mail on Respondent Wayne A. Moore at his last known address, and was returned by the United States Postal Service on December 4, 2000, with stamps indicating that notice was given on November 4 and 20, 2000, and the material was "unclaimed." A respondent's failure to provide for receiving appropriate service of documents or to claim certified mail cannot defeat the purposes of the Act. *National Automotive Sprinklers*, 307 NLRB 481 fn. 1 (1992), and *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). On November 3, 2000, a copy of the specification was served on Respondent Junior Allen Smith by certified mail and was received by him on November 6, 2000.

The National Labor Relations Board has delegated its authority in this proceeding to a three-Member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default summary judgment, the Respondents, despite having been advised of the filing requirements, have failed to file answers to the compliance specification.² In the absence of good cause for the Respondents' failure to file answers, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's motion for default summary judgment. Accordingly, we conclude that the net backpay due Tim Moran is as stated in the compliance specification and we will order payment by the Respondents of said amount to him, plus interest accrued on said amount to the date of payment. Further, we conclude that, as alleged in the compliance specification, Respondents Wayne A. Moore and Junior Allen Smith have failed to observe corporate formalities and have intermingled their individual affairs with those of Respondent Environmental. Thus, they are individually and severally liable to remedy the unfair labor practices of Respondent Environmental and for the backpay and interest due pursuant to this Order.

ORDER

The National Labor Relations Board orders that the Respondent, Environmental Construction Inc., Blue Springs, Missouri, its officers, agents, successors, and assigns, and Respondents Wayne A. Moore and Junior Allen Smith as individuals, shall, jointly and severally, make whole the individual named below, by paying him the amount following his name, plus interest as set forth

² It appears that no warning letter was sent to any of the named Respondents advising them that no response had been received and that a Motion for Default Summary Judgment would be entered. However, even assuming arguendo that no letter was sent, it is well established that this warning letter is not required by the Act or the Board's Rules. *Bricklayers Local 31*, 309 NLRB 970 (1992); *Superior Industries*, 289 NLRB 834, 835 (1988). Finally, although the Board's Casehandling Manual provides for the reminder letter, the failure of the Regional Office to send one does not excuse the Respondent's failure to file a timely answer. *Id.*

in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws.³

Tim Moran \$53,021.42

³ The General Counsel's compliance specification requests that the Board order the Respondent to "reimburse Moran for any extra Federal and/or state income taxes that would or may result from the lump-sum payment of this backpay award." The General Counsel's proposed Order would represent a change in Board law. See, e.g., *Hendrickson Bros.*, 277 NLRB 438, 440 (1985), *enfd.* 762 F.2d 990 (2d. Cir. 1985). We believe that the question should be resolved after full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB No. 126 fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order.

Dated, Washington, D.C. January 29, 2001

John C. Truesdale, Chairman

Peter J. Hurtgen, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD